

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application)	Examiner: Patrick Neal Butler
ERIC E. LENNON ET AL.)	
)	Art Unit: 1732
Serial No.: 10/694,153)	
)	Deposit Account: 04-1403
Filed: October 27, 2003)	
)	Customer No.: 22827
Appeal No. 2010-005996)	
)	
Confirmation No.: 3016)	

Title: UNIFORM NONWOVEN MATERIAL AND LAMINATE AND PROCESS
THEREFOR

APPELLANT'S REQUEST FOR REHEARING

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR § 41.52(a)(1), applicants hereby submit this Request for Rehearing of the Decision rendered on June 29, 2012, for the caption appeal.

Applicants respectfully request the Board to reconsider its affirmance of rejection (11) for obviousness-type double patenting. The affirmance is believed to be improper because as expressly stated in the Advisory Action mailed on June 2, 2009, the obviousness-type double patenting rejection was overcome by the argument on pages 8-9 of applicants' March 2009 Response to Final Office Action. Thus, this obviousness-type double patenting rejection was eliminated from the case. Accordingly, the Board lacked jurisdiction over any such obviousness-type double patenting rejection.

On page 1 of the Advisory Action mailed June 2, 2009, box no. 5 is checked and states that "Applicant's reply has overcome the following rejections: See continuation sheet."

The continuation sheet on page 2 of this Advisory Action mailed June 2, 2009, expressly states that: "Applicant's reply has overcome the following rejection(s): The nonstatutory obviousness-type double patenting rejection of claims 1, 11, and 23 over claims 1, 5 and 11 of U.S. Patent No. 7,488,441 B2."

Accordingly, applicants respectfully submit that there wasn't any obviousness-type double patenting rejection for applicants to appeal. For applicants already had overcome that rejection, as evidenced by the June 2009 Advisory Action, which preceded applicants' filing of the Notice of Appeal and the filing of applicants' original Appeal Brief.


Page 3 of the Examiner's Answer thus was an error. If the Examiner intended to revive an obviousness-type double patenting rejection, then it should have been designated as a new ground of rejection under 37 C.F.R. § 41.39(b).

Applicants therefore respectfully submit that the affirmance of the obviousness-type double patenting rejection was improper and should be withdrawn.

Respectfully submitted,

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DATED: 9 July 2012


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